Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Harman | Analyst: Norm Catelli | Bill Number: AB 115X

Related Bills: See Legislative History | Telephone: 845-4073 | Introduced Date: March 8, 2001

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: Energy Conservation Credit/MIC/Electric Transmission Lines/Research Credit 25% of Energy Conservation and Technology

SUMMARY

This bill would amend two existing credits:

- The research credit rate would be increased from 20% to 25% for certain research expenses relating to energy savings.
- The Manufacturer's Investment Credit (MIC) would be expanded to include construction and development of privately owned electric transmission lines in this state.

The bill also would establish five new credits related to energy:

- A 25% credit for energy-saving improvements made to a commercial or industrial use facility.
- A 35% credit for energy-saving improvements made to a taxpayer's principal residence built in 1978 or later.
- A 35% credit for energy-saving improvements made to a residential dwelling (with four or more units) built in 1978 or later.
- A 35% credit for energy-saving improvements made by a small business to any residential rental property built in 1978 or later.
- A 35% credit for the purchase and installation of equipment installed on any inactive power generation plant to make the plant active and in compliance with any environmental laws, regulations, or standards.

The bill would also amend the Public Resources Code and the Public Utilities Code. However, these amendments are not discussed in this analysis since they do not impact the department.

PURPOSE OF THE BILL

According to the author's staff the purpose of this bill is to create financial incentives to encourage energy conservation research, invest in energy production, and promote certain types of energy conservation.

Board Position:			Department Director	Date
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EFFECTIVE/OPERATIVE DATE

This bill has been reintroduced into the second special session as AB 43XX.

This bill would become effective on the 91st day following adjournment of the special session. If the bill becomes effective during 2001, the credit provisions would apply to taxable years beginning on or after January 1, 2001. If the bill becomes effective during 2002, the credit provisions would apply to taxable years beginning on or after January 1, 2002.

POSITION

Pending.

Summary of Suggested Amendments

See "Implementation Considerations" below. Department staff is available to assist the author with these and any other amendments.

ECONOMIC IMPACT

Estimated Revenue

Based on data and assumptions discussed below, provisions in this bill would have the following order of magnitude revenue effects.

Orders of Magnitude for Applied Credits As Introduced 3/8/01 [$ In Millions]			
Credit	2001-02	2002-03	2003-04
Research Credit	-$5 to -$10	-$5 to -$10	-$5 to -$10
MIC for construction of transmission lines	-$1	-$1	-$1
Energy conservation and efficiency improvements credits	-$125	-$125	-$125
Credit for activating inactive power generation plants	In excess of -$100	In excess of -$100	In excess of -$100

Research Credit

ANALYSIS

FEDERAL/STATE LAW

Existing federal law allows taxpayers a research credit that is combined with several other credits to form the general business credit. The research credit is designed to encourage companies to increase their research and development activities.

California conforms to the federal credit with the following modifications:

- The state credit is not combined with other business credits.
- Research must be conducted in California.
- The method of calculation for qualified research expenses is different under California law than under federal law.
- The credit percentage for qualified research in California is 15% versus the federal 20% credit.
- The credit percentage for basic research in California is 24% versus the federal 20% credit.
- The rules provided for start-up companies are different under California law than under federal law.

The California research credit is allowed for taxable years beginning on or after January 1, 1987, and is permanent.

THIS BILL

This bill would modify the federal research credit for California purposes. Specifically, it would increase the California research credit to 25 percent for energy conservation and efficiency technology research and development costs.

"Qualified costs" would include energy conservation and efficiency research and development costs of power generators, heating and air conditioning technologies, alternative energy sources (solar, wind, geothermal, or as otherwise defined by the California Energy Resources, Conservation and Development Commission, also known as the California Energy Commission (CEC)), and building materials used for these purposes.

IMPLEMENTATION CONSIDERATIONS

The bill defines the term "qualified costs," but does not use this term elsewhere. The definition of "qualified costs" includes a broad list of items. However, the bill does not provide a definition for any of these items. The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of the credit.

Under the definition of qualified costs, the bill refers to costs that are otherwise defined by the CEC. Qualified costs also would include "building materials used therefor." The bill does not provide a definition of building materials. The author should indicate if the building materials are to be used for special purpose buildings or somehow integrated with the items included in "qualified costs."

The CEC is responsible for the Public Interest Energy Research (PIER) Program, a mandated program designed to lead to energy solutions—developed through research, development, and demonstration (RD&D) projects—to increase electricity supply, reduce demand, lower peak demand, improve reliability, and power quality, improve the operations of the market, and protect and enhance the environment. As part of the PIER program they have devised criteria to evaluate public benefits that may result from energy research. Typically, credits that involve issues for which the FTB does not possess technical expertise provide that another agency certify the credit. The certification language would specify the responsibilities of both the certifying agency and the taxpayer.

The bill attempts to also modify the federal credit to provide an increased research credit related to energy conservation and efficiency technology. A California law change cannot amend a federal Internal Revenue Code section. If the author intended to modify California's conformity to federal law, the language would need to be amended.

LEGISLATIVE HISTORY

AB 43XX (Harman, 2001/2002) has been introduced as an identical bill and is scheduled for hearing in the Assembly Revenue and Tax Committee on July 2, 2001.

AB 1366 (Harman, 2000/2001) would increase the research credit for energy conservation and efficiency technology. This bill is being held in the Assembly.

OTHER STATES' INFORMATION

Massachusetts' corporate taxpayers, but not individuals, may claim an income tax credit for qualified expenditures that are used for increasing research activities in Massachusetts. The credit is 15% of the basic research expenses and 10% of qualified research expenses conducted in Massachusetts.

Florida excludes from the payroll factor for apportionment purposes compensation attributed to Florida that is dedicated exclusively to research and development activities performed pursuant to sponsored research contracts with a state university or certain nonpublic universities. This exclusion is for corporate income tax purposes only as Florida does not have a personal income tax.

Illinois' corporate and individual taxpayers may claim an income tax credit for qualified expenditures that are used for increasing research activities in Illinois. The credit equals 6 ½% of the qualifying expenditures.

Michigan, *Minnesota,* and *New York* do not allow a research credit. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

If the implementation considerations discussed in this analysis are resolved, the department's costs are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

This provision would result in revenue losses in the $5 million to $10 million range annually beginning in 2001-02.

Revenue Discussion

Research credits generated under current and proposed laws are simulated for each corporation from a sample of corporations with the most research and development expenses. These simulations take into account specific micro-economic data for each corporation such as gross receipts, wage, property, and sales factors, net income, historical research expenditures, and detailed tax and financial data. The results of the simulations are weighted statistically to the population level. Revenue losses are estimated as the difference between taxes simulated under current and proposed conditions. Simulations are made for all qualified research expenses. Revenue losses at the 1998 level were grown to future years by the growth rate in corporate profits as projected by the Department of Finance. The current energy crisis in California and its associated media attention are expected to raise energy-related research. Qualified energy conservation and efficiency technology research expenses are assumed to account for 5% to 10% of total qualified research expenses. Revenue effects of this proposal are largely under the corporation taxes. The revenue effect under personal income taxes is assumed to equal around 5% of the corporate tax impact.

Manufacturer's Investment Credit (MIC)

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal laws allow a taxpayer to deduct expenses paid or incurred in the ordinary course of a taxpayer's trade or business. Also, these laws allow a depreciation deduction for the obsolescence or wear and tear of property used in a trade or business or held for the production of income.

Existing federal law does not have a credit comparable to the MIC. However, federal law does provide an investment property credit for certain depreciable or amortizable property that qualifies for the rehabilitation, energy, or reforestation credit. The energy credit is 10% of the basis of each item of energy property placed in service during the tax year. "Energy property" is:

- Equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat; or
- Equipment used to produce, distribute, or otherwise utilize energy from a geothermal deposit. In the case of electricity generated by geothermal power, only equipment used up to but not including the electrical transmission stage is "energy property."

Existing federal law also provides a renewable electricity production credit. For 2000, the credit is 1.5 cents per kilowatt-hour of electricity produced at a "qualifying facility" by taxpayers from wind, "closed-loop biomass" (generally, organic plants, except timber, grown for the sole purpose of being used to generate electricity), or poultry waste. The electricity must be sold to an unrelated person during the taxable year. The credit is available for a ten-year period beginning with the year the facility is placed in service.

Existing state law allows qualified taxpayers a credit, known as the MIC, equal to 6% of the amount paid or incurred after January 1, 1994, for qualified property that is placed in service in California.

For purposes of the MIC, a qualified taxpayer is any taxpayer engaged in manufacturing activities described in specified codes listed in the Standard Industrial Classification (SIC) Manual, 1987 edition. Qualified property is any of the following:

1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code (IRC) and used primarily for:

- Manufacturing, processing, refining, fabricating, or recycling of property;
- Research and development;
- Maintenance, repair, measurement, or testing of otherwise qualified property; or
- Pollution control that meets or exceeds state or local standards.

2) The value of any capitalized labor costs directly allocable to the construction or modification of the property listed in #1 above or for special purpose buildings and foundations listed in #3 below.

3) For certain taxpayers engaged in specified SIC Code activities, special purpose buildings and foundations.

For taxpayers engaged in computer programming and computer software related activities, qualified property includes computers and computer peripheral equipment used primarily for the development and manufacture of prepackaged software, and the value of any capitalized labor costs directly allocable to such property.

The MIC explicitly excludes certain types of property from the definition of qualified property, such as furniture, inventory, and equipment used in an extraction process.

<u>THIS BILL</u>

This bill would allow taxpayers that can currently claim the MIC (i.e., are "qualified taxpayers") to also claim the MIC for the construction and development of electric transmission lines.

The bill would modify the definition of "qualified costs" to include costs paid or incurred for the construction and development of electric transmission lines. The transmission lines must be privately owned and located in this state.

The bill also would modify the definition of "qualified property" to include privately owned electric transmission lines located in this state.

IMPLEMENTATION CONSIDERATIONS

The bill does not define “electric transmission lines.” Although this appears to be an industry term, without a clear definition the term could mean only the power line or could mean anything associated with the power line (e.g., poles, foundations, etc.). Undefined terms can cause disputes between taxpayers and the department.

As currently drafted, only taxpayers engaged in manufacturing (SIC Codes 2011 to 3999) or computer software (SIC Codes 7371 to 7373) can claim the credit for the construction of electric transmission lines. It is unlikely that many of these businesses would construct transmission lines, unless a manufacturer who owns a manufacturing plant includes on its premises a co-generation facility that produces electricity to run the manufacturing line. If the author intends to allow the MIC to other types of non-manufacturing businesses, such as utilities, the definition of “qualified taxpayer” would need to be amended to include the desired SIC Code classifications.

This bill modifies “qualified costs” to include “any cost paid or incurred for the *construction and development* of electric transmission lines.” Such costs could include land, environmental impact studies, capitalized labor, etc., and together with the lack of a clear definition of "electric transmission lines," could result in uncertainty as to what costs would qualify. Currently the MIC is allowed for the cost of tangible personal property, certain special purpose buildings, and capitalized labor costs of constructing such property. Unclear definitions can cause disputes between taxpayers and the department. It would be preferable to specify what costs are included, especially if the author intends to include costs, such as land, that do not currently qualify for the MIC.

LEGISLATIVE HISTORY

AB 2461 (Runner, 1999/2000) would have (1) increased the MIC from 6% to 7% of the cost of certain property used in manufacturing, (2) extended the credit to certain electric power generation or mineral extraction businesses, and (3) extended the credit indefinitely. AB 2461 was held in the Assembly Revenue and Taxation Committee.

AB 2596 (Corbett, 1999/2000) would have extended the MIC to taxpayers engaged in the generation of electricity using natural gas. AB 2596 was held in the Assembly Appropriations Committee.

SB 1920 (Kelley, 1999/2000) would have extended the MIC to certain electric power generation corporations. SB 1920 was held in the Senate Revenue and Taxation Committee.

AB 96X (Campbell, 2001/2002) would extend the MIC to businesses engaged in the generation, transmission, and/or distribution of electric energy for sale. No action has been taken on this bill.

AB 240 (Runner, 2001/2002) is identical to AB 2461. AB 240 was held in the Assembly Revenue and Taxation Committee.

AB 1169 (Campbell, 2001/2002) would extend the MIC to businesses that generate electricity from fossil fuel or “other” sources. AB 1169 was held in the Assembly Revenue and Taxation Committee.

AB 1276 (Campbell, 2001/2002) is identical to AB 96X. AB 1276 was held in the Assembly Revenue and Taxation Committee.

OTHER STATES' INFORMATION

Review of *Illinois*, *Massachusetts, Michigan,* and *New York* tax laws found no comparable tax credit for electric transmission lines like that proposed by this bill. The laws of these states were reviewed because they have credits comparable to the MIC.

FISCAL IMPACT

If the implementation considerations discussed in this analysis are resolved, the department's costs are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

As currently drafted, this provision is not anticipated to have a significant revenue loss impact. It probably would not exceed $1 million in any given year.

This proposal did not redefine "qualified taxpayer." Therefore, only taxpayers engaged in manufacturing (Codes 2011 to 3999) or computer software (Codes 7371 to 7373) of the SIC Manual published by the United States Office of Management and Budget, 1987 edition, can claim the credit for the construction of transmission lines. It is unlikely that many of these businesses would incur construction costs for transmission lines.

ARGUMENTS/POLICY CONCERNS

This bill would benefit transactions for which binding contracts already exist and would not be limited to benefit only future business decisions. Under this bill, any costs paid under the terms of a contract entered into after January 1, 1994, but prior to taxable years beginning on or after the effective date of the bill, would qualify for the credit.

Energy Conservation and Technology Improvements Credits

ANALYSIS

FEDERAL/STATE LAW

As discussed under the MIC (pages 5 and 6 in this analysis), federal law currently provides two energy-related credits: an energy credit that is one portion of the investment credit, and a business credit for the production of electricity from certain renewable resources.

Prior federal law allowed a credit equal to 15%, up to a maximum total credit of $300, for the cost of the purchase and installation of energy-savings components in an individual's residence. The qualifying expenditures included such items as:

- Energy efficient furnace burners and electrical or mechanical furnace ignition systems; and
- Storm or thermal windows or doors, and caulking or weather-stripping of exterior doors or windows.

A separate federal credit equal to 40% of the costs, up to a maximum total credit of $4,000, was allowed for tax years 1979-1986. The credit was based on the purchase and installation of renewable energy equipment, such as solar, wind, and geothermal energy equipment. The renewable energy equipment was required to be installed in an individual's primary residence located in the United States. The equipment must have been new when installed and have had a useful life of at least five years.

Prior state law allowed a credit equal to a percentage of the cost of energy conservation measures. The credit was amended a number of times during its lifetime and was available for tax years 1977-1986. In later years, the credit for residential property was 40% of allowable costs for tax years 1981-1983 and 35% for tax years 1984-1986. Energy measures that qualified for the credit were similar to those in the federal credit.

If the federal credit was allowed on the same costs, the state credit was reduced by the amount of the federal credit. For residential properties, the combined federal and state credits could not exceed 40% of the cost. For nonresidential properties, the combined federal and state credits could not exceed 40% of the cost except where the cost exceeded $6,000. In this case, the federal credit was limited to 25% of costs, and the state credit was reduced by the amount of the federal credit. The state credit was limited to a maximum of $1,500. In addition, the state credit could not be claimed if the amount of state credit for any given year would have been less than $10.

The energy conservation credit could not be claimed for costs on which the solar energy credit was also claimed.

THIS BILL

This bill would establish four new credits for energy conservation and efficiency improvements for:

- Commercial or industrial facilities;
- Principal residences constructed on or after 1978;
- Residential dwellings with four or more units constructed on or after 1978; and
- Small business residential rentals constructed on or after 1978.

All four credits would:

- Define energy conservation and efficiency technology as limited to improvements to heating, ventilation, and air conditioning systems, including, but not limited to, improving or replacing insulation, windows, weather-stripping, low-flow devices, and heaters in connection with those systems.
- Provide that any excess credit may be carried over until exhausted.
- Preclude any otherwise allowable credit or deduction from being claimed for any cost for which these credits are allowed.

IMPLEMENTATION CONSIDERATIONS

The first credit (commercial or industrial) requires certification from the CEC. However, the other credits don't require certification until certain dollar amounts are exceeded ($2,500 for principal residences; $8,000 for four or more residential units; $2,500 for small business residential rentals). Certification would be by the local agency "that issues permits in connection with those improvements." That implies that permits would be required, which may not be true with reference to some improvements, e.g., insulation. Also, it would require a large number of diverse agencies to issue certifications. Typically, credits that involve issues for which the FTB does not possess technical expertise provide that another agency certify the credit. The certification language would specify the responsibilities of both the certifying agency and the taxpayer.

LEGISLATIVE HISTORY

AB 873 (Takasugi, 1997/1998) would have allowed a 40% credit for the cost of energy conservation measures. The bill also would have allowed a second credit equal to 10% of the cost of a solar energy system installed on premises located in California and used for commercial purposes, subject to certain requirements. The bill failed to pass the Assembly Revenue and Taxation Committee.

AB 84X and AB 1269 (Campbell, 2001/2002) would allow a 25% credit for an energy-reducing device that uses significantly less energy than other comparable devices. AB 15X (Rod Pacheco, 2001/2002) would allow a 100% credit for the purchase of energy conservation measures that reduce electricity and natural gas used by a taxpayer by 5% from the previous taxable year. Currently, AB 84X and AB 1269 are being held in the Assembly Policy Committee. AB 15X has been reintroduced to the second special session as AB 15XX (Rod Pacheco, 2001/2002).

AB 27X (Koretz, 2001/2002) would allow multiple credits for the purchase and lease of a power generation system, an accelerated depreciation deduction for a power generation system, and a claim for refund with the Board of Equalization. AB 27X has been reintroduced into the second special session as AB 29XX (Koretz, 2001/2002).

SB 17X (Brulte and Peace, 2001/2002) would allow a credit equal to an applicable percentage for the purchase and installation of a solar energy system for the production of electricity. SB 17X has been reintroduced into the second special session as SB 17XX (Brulte and Peace, 2001/2002).

OTHER STATES' INFORMATION

Massachusetts currently has an energy credit that is equal to 15% of the net expenditures, or $1,000, whichever is less.

Michigan does not allow an energy-related credit, but exempts the value of energy conservation devices from local property tax.

New York, for personal income tax only, allows a 25% credit for solar generating equipment expenditures. The credit is capped at $3,700 per system. New York also allows industrial or manufacturing businesses a refundable credit for certain taxes paid on energy.

Oregon currently has two energy credits; a PIT consumer energy purchases credit and a corporate tax credit for the costs of energy projects. The consumer energy purchases credit allows various credits ranging from $50 to $1,500 for consumer purchases of certain items. The corporate credit for the costs of energy projects is a credit equal to 35% of the incremental costs of the project involving energy conservation and other related projects.

FISCAL IMPACT

If the implementation considerations in this analysis are resolved, the department's costs are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, the provisions for energy conservation and efficiency improvements to specified qualified properties in California would result in significant revenue losses under the PITL, potentially on the order of $125 million annually beginning in 2001-02.

Energy Conservation and Efficiency Improvement Credits		
Credit	Qualifying Property	Potential Credits Generated Annually [$ In Millions]
25%	Commercial or industrial	$90
35%	Principal residence	$25
35%	Residential dwellings with four units or more constructed after 1978	$10
35%	Residential rental property constructed after 1978	$20

Note: This table represents the potential credit amounts generated annually. The Summary Table on page 2 represents the estimated revenue impact of the credits actually utilized to reduce tax liability.

Revenue Discussion

The revenue impact of these provisions would be determined by the amount of costs incurred by taxpayers for energy conservation and efficiency improvements and the amount of credits that could be applied to reduce tax liabilities. Each proposed credit targets a specific type of qualified property in California and varies with respect to the credit percentage and the limitation on costs for such improvements.

Energy conservation and efficiency improvements are limited to improvements to heating, ventilation, and air conditioning systems, including improving or replacing insulation, windows, weather-stripping, low-flow devices, ventilation cooling fans, attic ventilators, economizing devices, and heaters in connection with those systems. Examples of such measures can range in cost from a few dollars for weather-stripping to several thousand dollars for a new energy-efficient heating and cooling system in a home to hundreds of thousands of dollars or more by a business in a commercial facility.

A **25% credit** targets any facility used for commercial or industrial use and excludes any residential facility. Qualifying costs are unlimited but must be certified by the CEC based upon receipts for purchases or labor costs and applicable permits for construction and installation.

There are roughly 425,000 non-governmental and non-tax-exempt commercial buildings and over a million business enterprises in California. If one in 20 taxpayers that own or use a facility in California for commercial or industrial use incurs certified costs of $5,000, credits generated would total $94 million [1.5 million x 5% x $5,000 x 25%].

A **35% credit** targets principal residences constructed on or after 1978. Qualifying costs are limited to $2,500 without certification and are unlimited if certified by the local agency that issues permits in connection with the improvements.

There are roughly 4.8 million owner occupied residential structures in California of which approximately 1.5 million were constructed after 1977. If one in 10 taxpayers who own and occupy the approximately 1.5 million residential structures incur qualifying costs of $500 on average, credits generated would total $26 million [1.5 million x 10% x $500 x 35%].

A **35% credit** targets residential dwellings with four units or more that were constructed on or after 1978. Qualifying costs are limited to $8,000 without certification and are unlimited if certified by the local agency that issues permits in connection with the improvements.

There are roughly 3.3 million residential units within structures consisting of four or more units of which nearly one million units were constructed after 1977. Assuming the one million units equates to roughly 50,000 structures, and if one in 10 taxpayers who own these structures incur costs of $5,000 on average, credits generated would total $9 million [50,000 x 10% x $5,000 x 35%].

A **35% credit** targets small businesses residential rental property that was constructed on or after 1978. Qualifying costs are limited to $2,500 without certification and are unlimited if certified by the local agency that issues permits in connection with the improvements, and costs must be incurred by a small business, as defined.

There are roughly five million residential rental units in California consisting of the following types of structures: single family detached and attached; mobile homes; two to four units; and five or more units. It is estimated that approximately 1.5 million were constructed after 1977. If qualified taxpayers, as defined, own 1% of the 1.5 million structures and these taxpayers incur costs of $1,000 on average, credits generated would total $18 million [5.0 million x 1% x $1,000 x 35%].

ARGUMENTS/POLICY CONCERNS

The following concerns would apply to all four of the proposed energy conservation credits:

- Public utilities often offer grant programs to encourage people to install and use energy conservation measures or energy efficient appliances. The bill does not require the cost of the device or the credit amount to be reduced by the amount of any financial incentive or grant received.

- This bill does not specify a repeal date. Credits typically are enacted with a repeal date to allow the Legislature to review the effectiveness of a credit.

- This bill does not limit the number of years for the carryover period. The department would be required to retain the carryover on the tax forms indefinitely because an unlimited credit carryover period is allowed. Recent credits have been enacted with a carryover period limitation since experience shows credits are typically used within eight years of being earned.

- The bill would allow a credit to be claimed for conservation and efficiency improvements starting with the 2001 taxable year. Allowing a credit for costs paid or incurred prior to the enactment date could provide a windfall to those taxpayers that would have acquired the devices without the additional incentive provided by this bill.

Inactive Power Generation Plant Credit

ANALYSIS

FEDERAL/STATE LAW

See the discussion under “MIC” on pages 5 and 6 of this analysis.

THIS BILL

This bill would allow a 35% credit for the cost paid or incurred for the purchase and installation of any qualified equipment installed on any inactive power generation plant in this state.

“Qualified equipment” would mean equipment necessary to make the power plant active and in compliance with any environmental laws, regulations, or standards, and is certified by the CEC.

No credit or otherwise allowable deduction would be allowed for any cost for which this credit was allowed.

Any excess credit could be carried over until exhausted.

Note: This provision has a different operative date. This credit would be operative for taxable years beginning on or after January 1, 2001, and before January 1, 2011.

IMPLEMENTATION CONSIDERATIONS

This bill uses terms that are undefined, i.e., "equipment," "compliance with any environmental laws," "inactive plant." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of the credit. It also is unclear if the author intends there to be recapture provisions.

OTHER STATES' INFORMATION

Review of *Illinois*, *Massachuse*tts, *Michiga*n, and *New York* tax laws found no comparable tax credit to restart an inactive power plant like that proposed by this bill. The laws of these states were reviewed because they have credits comparable to the MIC.

ECONOMIC IMPACT

Revenue Estimate

As currently drafted, this provision would potentially result in significant revenue losses under the PIT and the B&CT Laws. The potential exists for revenue losses in the hundreds of millions of dollars annually.

As drafted, any power generation plant that is inactive for any period of time (i.e., one day, one month, for routine maintenance, etc.) and subsequently becomes active would qualify the taxpayer for the credit. Costs, therefore, would vary considerably. For example, according to the CEC there are five power generation plants on cold standby (within six months of being on-line) with a total generating capacity of approximately 1,230 megawatts. The cost to bring one of the plants back on-line is estimated by industry experts as approximately $150 million with a peak generating capacity of approximately 450 megawatts. This yields a tax credit of $53 million ($150 million x 35%). Therefore, five generating plants totaling 1,230 megawatts (assuming that each facility incurs similar average costs per megawatt) would generate tax credits of $145 million.

ARGUMENTS/POLICY CONCERNS

The following concerns would apply:

- The bill does not limit the number of years for the carryover period. The department would be required to retain the carryover on the tax forms indefinitely because an unlimited credit carryover period is allowed. Recent credits have been enacted with a carryover period limitation since experience shows credits are typically used within eight years of being earned.

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